IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.398 of 2005

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M/s.Bharat Bijlee Limited ...Petitioner

v/s.

Union of India ...Respondent

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Mr.C.S. Balsara i/b Ashwin Ankhad & Associates for the Petitioner.

Ms.S.I. Shah for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 8TH MARCH,2006

P.C.:

1. By this petition the Petitioner challenges the award dated 15th July, 2005 made by the sole arbitrator. By that award the arbitrator has directed the Petitioner to pay Rs.1,25,000/-, which was required to be paid by the Respondent to a person who suffered injury because of the accident that occurred to the lift which was maintained by the Petitioner. According to the award the Petitioner was claiming maintenance charges from 1-6-1999. The accident took place on 6 July, 1999. On the date on which the accident took place, the lift was under the maintenance of the Petitioner and therefore the Petitioner was liable to pay.

2. The learned Counsel appearing for the Petitioner is not disputing that the Petitioner was claiming maintenance charges from 1-6-1999. But according to him the Petitioner was not actually maintaining the lift on the date of the accident i.e. 6th July, 1999. For that purpose reliance is placed by the Petitioner on the letter dated 2-7-1999 at Exh."C"

and the letter dated 8-7-1999 at Exh."D".

3. So far as the letter at Exh.C is concerned, it does not relate to the lift wherein the accident took place. Accident admittedly took place in eight passengers lift. The letter dated 8-7-1999 relates to other lift i.e. thirteen passengers lift. So far as letter dated 2-7-1999 is concerned, paragraph 2 of that letter also relates to 13 passengers lift. In paragraph 3 it is stated that it is mutually agreed that the Petitioner would take over maintenance of the Lift once this work was completed. It relates to 13 passengers lift, therefore, it is possible to say that even the letter dated 2-7-1999 does not refer to eight passengers Lift. In any case, it is an admitted position that the Petitioner has no where explained if according to him he was not maintaining the lift from 1-6-1999 why he was claiming maintenance charges from 1-6-1999. In the absence of any explanation given by the Petitioner, in my opinion, the arbitrator was perfectly justified in relying on the fact that the Petitioner was claiming maintenance from 1-6-1999. It was then contended that the arbitrator has relied on one man inquiry committee report. A copy of that report was not

supplied to the Respondent. Perusal of the award however, shows that the learned arbitrator has not actually relied on that report. Then it was submitted that the Petitioner was denied an opportunity to lead oral evidence. It is not even the case of the Petitioner that the Petitioner filed an affidavit of evidence, which the arbitrator refused to accept. If the Petitioner wanted to lead oral evidence he could have filed his affidavit of examination-in-chief and keep his witness ready for cross-examination. The plea that the arbitrator denied an opportunity to the Petitioner to lead oral evidence obviously is an after thought. Then it was urged that in the reply filed before the arbitrator the Petitioner has said that the arbitrator is biased against the Petitioner, because he is an employee of the Respondent. But firstly the arbitrator has been named in the agreement and secondly no application under Section 13 of the Act was filed by the Petitioner.

4. Taking overall view of the matter, therefore, I do not find any fault with the award. Petition has no substance. It is dismissed. Petitioner is directed to pay costs of this petition, as incurred

by the Respondent.

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